

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8519 of 2004
with
Special Civil Application No. 9191 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

DWARKESH INDUSTRIAL CO-OP SERVICE
SOCIETY LTD & Anr.

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 8519 of 2004
MR AMIT V THAKKAR for Petitioner No. 1
Mr. Nagesh Sood, AGP for Respondent No. 1-3
NOTICE SERVED BY DS for Respondent No. 4-8

CORAM : HON'BLE MR.JUSTICE M.R. SHAH
Date of decision: 04/08/2004

COMMON ORAL JUDGEMENT

Rule. Mr. Sood, learned AGP waives service of
Rule on behalf of respondents No. 1 to 3. Though

served, nobody appears on behalf of private respondents. While issuing notice, this Court had made it clear that the matter will be taken up for final hearing on the next date of hearing and accordingly the matter is taken up for final hearing today.

2. Being aggrieved and dissatisfied with the judgment and order dated 6.5.2004 passed by the Secretary (Appeals), Revenue Department, State of Gujarat in Revision Applications No. 42 and 48 of 1996 in dismissing the said revision applications and confirming the order passed by the Collector, Surat, dated 30th September 1995 quashing and setting aside Entry No. 908 dated 9.12.1970, the respective petitioners have preferred the present Special Civil Applications.

3. Lands bearing Survey No. 156/1 and 167 situate at Surat were shown to be a new tenure land in the record of rights. Vide Entry No. 908 dated 9.12.1970, on the basis of the order passed by the Mamlatdar, Choryasi dated 3.12.1970 the entry with regard to new tenure was cancelled. It seems that the said entry with regard to cancellation of new tenure came to be certified on 3.1.1971. On the basis of the said entry and considering the same as old tenure land the petitioners had purchased different lands by registered sale deeds even after obtaining Non-Agricultural use permission and the lands bearing Survey No. 167 (Paiki) admeasuring 20196 sq.mtrs. came to be purchased by petitioners of both the Special Civil Applications by registered sale deeds and necessary entries to that effect were also mutated in the record of rights vide entries No. 62, 64, 65, and 63 & 41 respectively in the year 1975. It seems that entry No. 908 dated 9.12.1970 came to be taken under suo motu review initially by the Deputy Collector and thereafter by the Collector in the year 1993, more particularly proceedings came to be initiated on 4.10.1993 after a period of 23 years and the Collector by his judgment and order dated 30th August 1995 set aside entry No. 908 dated 9.12.1970 by holding that the entry by which the words "new tenure" came to be cancelled was without any authority, that the Mamlatdar, Choryasi was not authorised to do so, and that there would be breach of Section 63 of the Bombay Tenancy & Agricultural Lands Act. Being aggrieved and dissatisfied with the order passed by the Collector, Surat, dated 30th August 1995, the petitioners preferred two separate revision applications before the learned Secretary (Appeals) being Revision Application Nos. 42 and 48 of 1996.

4. It was contended on behalf of the petitioners

before the revisional authority that entry No. 908 dated 9.12.1970 could not have been set aside by the Collector after a period of 23 years. He has further submitted that during this 23 years' period the position has changed substantially and they are the bonafide purchasers of the land in question who have purchased the same in 1975 by registered sale deeds and therefore the Collector could not have set aside Entry No. 908 dated 9.12.1970. It was pointed out that even the order which came to be passed by the Mamlatdar in the year 1970, i.e. order dated 3.12.1970 on the basis of which the entry with regard to new tenure land came to be set aside is not challenged and is not set aside by any of the authorities below and therefore requested to allow the revision applications and to quash and set aside the order passed by the Collector, Surat. In spite of the aforesaid facts and circumstances of the case the learned Secretary (Appeals) by his common judgment and order dated 6.5.2004 dismissed both the revision applications confirming the order passed by the Collector, Surat, dated 30th September 1995 by which Entry No. 908 dated 9.12.1970 was set aside.

5. Being aggrieved and dissatisfied with the judgment and order passed by the learned Secretary (Appeals, Revenue Department, State of Gujarat dated 6.5.2004 in aforesaid two revision applications in dismissing the same and confirming the order passed by the Collector dated 30th September 1995 in cancelling the Entry No. 908 dated 9.12.1970, the petitioners have preferred the present Special Civil Applications. As both the petitions are in respect to the Entry No. 908 dated 9.12.1970 challenging the common judgment and order, the same are decided together and disposed of by this common judgment.

6. Shri Amit V. Thakkar, learned advocate appearing on behalf of petitioners has submitted that the entry No. 908 dated 9.12.1970 could not have been set aside by the Collector after a period of 23 years. He has further submitted that the Collector has not exercised the powers within a reasonable period. He has further submitted that they are the bonafide purchasers of the land and they have purchased the same by registered Sale Deed after obtaining necessary N.A. permission. He has also submitted that so far as entries in their favour being entries No. 62, 64, 65 and 63 & 41 are concerned, they are not set aside and that even the order passed by the Mamlatdar dated 3.12.1970 on the basis of which the Entry No. 908 dated 9.12.1970 was effected is also not quashed and set aside till date and still in existence. He has

further submitted that inspite of all the aforesaid facts pointed out before the revisional authority the revisional authority has not considered the same and has dismissed the revision application confirming the order passed by the Collector, Surat. He has further submitted that the entry came to be set aside and the order came to be confirmed by the revisional authority on the ground that there will be breach of Section 63 of the Tenancy Act.

7. Shri Sood, learned AGP has submitted that as the order passed by the Mamlatdar, Choryasi, dated 3.12.1970 was without any jurisdiction. The entry No. 908 dated 9.12.1970 made by deleting the words "new tenure" itself was a nullity and therefore could have been set aside by the Collector at any time. He has further submitted that if the land is to be treated as new tenure land, then prior permission was required to be obtained and necessary premium was required to be paid and therefore Entry No. 908 dated 9.12.1970 was itself contrary to law and provisions of the Tenancy Act and therefore it is rightly quashed and set aside by the Collector, Surat.

8. Heard the learned advocates appearing for the parties. Entry No. 908 dated 9.12.1970 came to be mutated on the basis of the order passed by the Mamlatdar, Choryasi dated 3.12.1970 and the words "new tenure" came to be deleted from the entry. The order passed by the Mamlatdar Choryasi dated 3.12.1970 is not disturbed and not quashed and set aside by any of the authorities till date. Apart from that, the petitioners are the subsequent purchasers. On the basis of the aforesaid entry they are the bonafide purchasers who purchased the land by registered sale deeds on payment of considerations and after obtaining N.A. permission. The proceedings came to be initiated by the Collector for the first time in the year 1993 after a period of 23 years. As held in catena of judgments of this Court, the Collector could not have exercised his powers after a period of 23 years. The period of 23 years cannot be considered to be a reasonable period for exercise of power by him more particularly in the meantime, the parties have changed the position. On the basis of the entry No. 908 dated 9.12.1970 considering the land in question as old tenure land the petitioners have purchased the land in question by registered sale deeds and plottings are also done and sheds constructed are allotted to various other persons. It is also pertinent to note, that the entries made in favour of the petitioners being entries 62, 64, 65 and 63 & 41 are also not set aside by any of the authorities till date. If

those entries are still there, there is no purpose to set aside the entry No. 908 dated 9.12.1970. As stated hereinabove, the order, on the basis of which Entry No. 908 dated 9.12.1970 was mutated, is not set aside till date. Under the circumstances, there is no question of quashing and setting the entry No. 908 dated 9.12.1970.

9. In view of the aforesaid facts and circumstances of the case, the order passed by the Collector, Surat cannot stand and the same is required to be quashed and set aside. The judgment and order passed by the Collector, Surat dated 30th September 1995 in so far as it cancelled the Entry No. 908 dated 9.12.1970 is quashed and set aside. Consequently, another direction issued by the Collector, Surat is also quashed and set aside. Subsequently, the judgment and order dated 6.5.2004 passed by the revisional authority Secretary (Appeals) in Revision Applications No. 42 and 46 of 1996 are accordingly quashed and set aside. Both the petitions are allowed. Rule is made absolute to the aforesaid extent with no order as to costs.

[M.R. Shah, J.]

rmr.